

**LAND USE CONSENT APPLICATION LUC18/47378
AND SUBDIVISION CONSENT APPLICATION
SUB18/47165 – PROPOSED FONTERRA FARM
SOURCE STORE AND 2 LOT SUBDIVISION AT 2475
SOUTH ROAD, OKATO**

STATEMENT OF MIKE SPENCER

(J Dinnis representative)

28 March 2019

1. I represent James Dinnis, a submitter at this hearing.
2. By way of background, I am a neighbour to James. My wife and I have lived at 20 Kaihihi Road Upper since 1972, at a time when there were only one or two houses on the road. The FBT (now Ravensdown) bulk fertilizer store was established in 1973 opposite us about a year later. Since then we have seen the development of a number of residential sections on the road, of varying sizes.
3. I have some knowledge of the character parts of the District Plan so I cover that issue for Mr Dinnis. (My wife and I made a submission and spoke at the hearings for Plan Change 27.)

Rural Character and the District Plan

4. By way of background, my wife and I watched in alarm as, after the new District Plan came into operation in about 2002, there was a steady stream of “lifestyle” blocks created, lining the sides of virtually every side road off State Highway 45, between us and New Plymouth, an area we travelled all the time. The Council itself became alarmed by the huge number of subdivisions being created, and brought in a proposed amendment to the rural subdivision rules.
5. In 2009 a change was initiated to the current District Plan due to concerns that:¹

¹ References from plan change documents.

“some parts of the rural area are changing in character due to development and subdivision”; and

“there is concern that the cumulative effects of development are not able to be considered and are impacting on rural character”.

6. As stated, my wife and I made a submission at these hearings.
7. When Plan Change 27 was finalised, it still gave opportunities for ‘lifestyle’ development in the rural area, but it made land use and subdivision controls much more restrictive. The intention was to maintain rural character and manage landscape effects. This is reflected in the District Plan now.
8. In the Decision on the Plan Change (Sept 2011) it is stated:

“ ... Although balance areas larger than four hectares are generally required to maintain spaciousness (eg: 20 hectares) there are circumstances where spaciousness can be maintained due to topography and other landscape considerations. This provision acknowledges the varied nature of the landscape in the District and provides the opportunity to apply. However a high level of assessment is required to determine the appropriateness of the subdivision.”
9. This *“high level of assessment”* required, accords with the advice that we had been given by the planning officer.
10. In talking to a planning officer at the Council, in the context of this application, we were given to understand that the position was something like this:

If one left a balance of 20 hectares, then the subdivision could proceed as of right; if the balance was only 4 hectares, the criteria of judgement in allowing such a subdivision needed to be stricter, and in the case of a subdivision of less than 4 hectares (which is “non-complying” under the plan), the “burden of proof” needed to be stricter still. There needed to be special circumstances (of landform or vegetation, for instance) that allowed for the “feel” of the countryside to be preserved.
11. I don’t think that anyone, including Mr Dinnis, envisaged the situation of a commercial retail operation wishing to establish in a rural zone on a non-complying undersize subdivision.
12. I am aware that a non-complying activity must go through one of two gateway tests, which I now address for Mr Dinnis.

First Gateway: Not contrary to Objectives and policies of the District Plan

Plan Provision (my emphasis)	Comment
<p>Management Issue 4: Loss or reduction of rural amenity and character</p> <p><i>"The threats to RURAL CHARACTER are the use of land for intensive rural-residential development for <u>intensive commercial or industrial use and for activities that have not always located in the rural environment.</u> Such development could result in a loss of "spaciousness", alter the built environment, <u>reduce pleasantness through</u>, for example, increased noise levels and have implications for infrastructure and servicing."</i></p>	<p>This seems to exactly match the proposed development as it is "for <i>intensive commercial use</i>" and is an activity - retail shop - that has "not always located in the rural environment" and will result in "loss of spaciousness"</p>
<p><i>"Visual amenity can be adversely affected by activities that reduce the spatial environment, increase the density of built form or reduce visual factors such as vegetation or landform. There are also visual effects from activities that are not associated with a rural land use. This lack of a productive connection can reduce rural amenity, particularly when this occurs <u>cumulatively</u> in the rural environment."</i></p>	<p>This clause of the District Plan explicitly warns against "cumulative" development, yet the applicant uses the pre-existence of the garage and hotel as a justification for allowing further development in the immediate area. This is using a cumulative argument in exactly the reverse way to that advocated by the Plan.</p>
<p>Objective 4</p> <p><i>"To ensure the subdivision, use and development of land maintains the elements of RURAL CHARACTER."</i></p>	
<p>Policy 4.2</p> <p><i>"Control the density, scale, location and design of subdivision by providing limited opportunities for small allotment subdivision, having consideration to the following matters:</i></p> <p><i>(a) The environment is spacious, maintains a low density and the</i></p>	<p>Note that there is no undulating landscape, therefore design, layout and visual treatment has to "maintain the elements of rural character". It is hard to see how this can be, with such an intensive development on a small lot.</p>

<p><i>subdivision provides a large balance area.</i></p> <p>...</p> <p><i>(c) The subdivision and resulting development is not highly visible in the landscape and there is no apparent aggregation of development because of:</i></p> <p><i>(i) the undulating nature of the landscape;</i></p> <p><i>(ii) the design and layout of; the allotments and any servicing requirements;</i></p> <p><i>(iii) the design and visual treatment of the resulting development.”</i></p>	
<p>Policy 4.3</p> <p><i>“Control the density, scale, location (including on-site location) and design of activities by;</i></p> <p><i>(a) Imposing a maximum height for all buildings...</i></p> <p><i>(b) Providing a maximum area that can be covered by buildings to control the effects of larger scale activities on small sites</i></p> <p><i>(c) Requiring buildings to be setback from the road boundary in order to maintain spaciousness;</i></p> <p><i>...”</i></p>	<p>This proposal does not meet standards (b) and (c), which are designed to maintain rural character by preserving spaciousness and controlling density and visual obtrusiveness due to size and proximity to the road.</p> <p>The proposal also states that the activity is considered a “productive use” associated with the elements of rural character. Mr Dinnis finds it very difficult to see how a commercial retail store can be described as a “productive use” which clearly indicates a farming activity, not a retail operation.</p>

13. Looking over the above, it is quite clear that the proposal does not meet the aims of the District Plan as pertaining to the rural area, and in particular, does not meet the subdivision provisions that are aimed to maintain rural character, or the size and set-back requirements that are designed to prevent clutter and over excessive built forms on the landscape.
14. In particular the nature of the activity as a commercial retail store is inconsistent with the rural nature of the landscape. The benefit that the properties at 8 and 12 Kaihihi Road currently receive from the nature of their surroundings will be badly affected by their close proximity to a commercial retail frontage.
15. The site still retains rural character, or at least rural-residential character, even despite the Ravensdown fertilizer store, the garage, and Stony River Hotel. Rather than relying on these buildings for its establishment, the Farm Use Store will be the ‘straw that breaks the camel’s back’ for the rural

character of Kaihihi Road. That is the true nature of a “cumulative effects” assessment.

Effects Minor?

16. From the point of view of a layperson who has very carefully read the “expert” evidence, it is very difficult to see how the effects of the proposal on the landscape can be “minor”.
17. The landscape architects admit that the building will make a considerable change to the landscape. Richard Bain’s initial assessment of the proposed building is that it will create a **“moderate-high effect”**.

The proposal will form a significant and new element within the landscape and will affect the overall landscape character and/or affect to the viewer.

18. The Council’s landscape architect also supports this view:²

7.1 I agree with the LVIA that the proposal will have a moderately adverse landscape effect. As a result of the proposed development there would be a change from the existing open character of the site towards an intense built development.

19. Note use of the word “intense”.
20. It should be noted that **“moderate-high”** or “moderately adverse” equate to “more than minor” (see table on page 27 of the Bain report.)
21. Both of these expressions, “moderate-high” and “moderate-adverse” still seem inadequate to express such a considerable change. Mr Bain also says, under Significance of Effect:

“The introduction of the Farm Source building and associated infrastructure is likely to create a noticeable change in landscape character.”

22. Mr Dinnis considers this to be an understatement.

Mitigation

23. With a residential section, the Council can and does demand that effective screening take place if this does not already exist. In the case of a retail operation such as this one, the business clearly needs to be visible and able

² Martha Dravitzki, page 106.

to advertise itself to its customers. Hence the site needs to remain open to view. Effective screening is not really an option.

24. The measures suggested by Mr Bain to “mitigate” this effect consist of a planting of mixed trees and shrubs along three sides of the site (but with some gaps to allow for views of signage on the SH45 boundary, and also a gap to allow space for trucks turning, on the eastern boundary). On the fourth side, the Kaihihi Road side, which presents the full-length view of the building, it is only proposed that shrubs be planted.
25. The reason why only shrubs are proposed on the Kaihihi Road boundary is explained as follows in Mr Bain’s evidence:

“Trees along the Kaihihi Road boundary were also initially recommended, but these would have blocked views of Mount Taranaki from the Stony River Hotel. On balance, I considered that the amenity afforded by hotel patrons of seeing the mountain outweighed the benefits of the trees for mitigating effects from users and residents of Kaihihi Road, particularly given that the building is set back over 50m from the road boundary (the canopy is setback 40m).”

(My emphasis)

26. As the building is 6.4 metres high it would take very many years to completely screen it. Again, as it is a commercial store the owners will not want it completely hidden from the State Highway. On the Kaihihi Road side there will be a view that is overwhelmingly of a built environment, with just a thin strip of green in front of the fence.
27. The term used by the landscape architects is that the planting will “soften” the effect of the building. Looking at the simulation I find this hard to support.

[Pause to refer Mr Legrand Simulations A1-005 and A1-006 on powerpoint]

28. Mr Legrand’s simulations show the actual effect, taking into account the car park and display area.
29. The rural outlook will be replaced by a brightly painted large building surrounded by an asphalt yard. The yard itself will be used to store farm materials for sale e.g. fence posts, farm gates, water troughs.
30. On the long frontage of the building facing Kaihihi Road, there will be greenery only two-thirds of the way up the fence, after perhaps 10 years, but this will not alter “*the preponderance of built form*”, to use a landscape architect’s terminology. In other words, the view will not be significantly altered. Therefore, Mr Dinnis cannot see how the Landscape and Visual

Impact Effects Report can claim that: *“overall the effects will not be more than minor”*.

Spacious environment or enclosed?

31. The “sense of spaciousness” that the District Plan refers to would have been a major reason why the Dinnis’s chose to live on Kaihihi Road Upper in the first place. This development removes that sense of spaciousness.
32. The landscape report relies heavily on the existing hedging at 8 and 12 Kaihihi Road Upper being a “mitigating factor”.
33. The report considers that since this existing hedging screens out views (though not, of course, the noise of truck and vehicle movement), the effect on these properties is reduced.
34. But this conclusion is based on the occupants remaining inside their houses. It takes no account of what they see when they exit their properties or walk to the road. Nor does it take into account the fact that the “amenity values” of these properties, to use the landscape architect’s terminology, is enhanced by the surroundings.
35. As Ms Dravitski rightly states:

“[6.9] Kaihihi Road is a relatively narrow quiet dead end rural road. There is some recreational use of the roads as a walking loop from Okato, around the domain, along Kaihihi Road and then along SH45 back to the settlement”.
36. People enjoy the walk around the area frequently.

Species to be used

37. The shrub proposed to “mitigate” the view from Kaihihi Road is Coprosma ‘Middlemore’. The expected growth of this shrub as advertised by various nurseries is, on average, after ten years, 1.5 metres. However, this would be in ideal conditions. And these are adverse conditions as:
 - 37.1. There is no shelter;
 - 37.2. The ground consists of a very thin layer of top soil under which is a mixture of stones and gravel from an old lahar flow.
38. On our own property we have developed an extensive two acre native planting of trees and shrubs since 1983 on the same lahar flow. Coprosmas will certainly grow but due to the soil conditions not rapidly. In fact, irrigation will probably be required in the summer due to probable drought (which we have had most summers recently) - but this will not be possible because of

problems of water availability in Okato meaning that outdoor watering restrictions are in place.

39. These factors mean the shrubs could be difficult to establish.
40. I am aware that the planting scheme could be changed to say *Phormium Tenax* or *Phormium Cookianum*. They would probably survive as they are more drought resistant, but again, will not grow as well as they would in good soil. But the effect will be the same - the flax would reach much the same height as the shrubs, i.e. one-half to two-thirds up the fence after ten years depending on the conditions.
41. Turning to the proposed trees, *Metrosideros Robusta*, or Northern Rata—this is a forest tree. Despite its close relationship to the Pohutakawa it grows in completely different conditions. As a forest tree it needs the shelter of surrounding bush to establish when young. Our own experience planting several specimens of Northern Rata and Blue Rata, a local subspecies, just across the road in the same conditions on the lahar zone, was that neither species survived even with shelter around them.
42. Mr Dinnis accepts that whatever tree is planted, and assuming it does grow, there will be, eventually (after 10 years or more) some screening from SH45, although the building will be seen from the entranceway and views of the signage will be maintained, so that the screening will never be complete.

Conclusion

43. The Dinnis's had thought that they were entitled to rely on the provisions of the District Plan as it applied to rural areas. The intention of the rules was clearly meant to preserve a sense of open space and an uncluttered feel to the countryside.
44. The proposal:
- (a) Is contrary to the provisions of the District Plan; and
 - (b) Will have more than minor adverse effects.
45. Mr Dinnis and then his parents wish to speak very briefly, and have other witnesses. The order will be:
- James Dinnis (submitter);
 - Rob and June Dinnis (submitter);
 - Lyndon (and Catherine) DeVantier (lay witness); and
 - Mr Ted Wells (lay witness).